

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1903.

No. 1350.

242

No. 18, SPECIAL CALENDAR.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

FREDERICK DE B. WESTON.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 10, 1903.

Court of Appeals of the District of Columbia.

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In the Court of Appeals of the District of Columbia

DISTRICT OF COLUMBIA, Plaintiff in Error, }
vs. } No. 1350.
FREDERICK DE B. WESTON. }

a In the Police Court of the District of Columbia, June Term,
1903.

DISTRICT OF COLUMBIA, }
vs. } No. 237,821.
FREDERICK DE B. WESTON. }

Information for Violation of Police Regulations.

Be it remembered, that in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 (Information.)

In the Police Court of the District of Columbia, June Term, A. D.
1903.

THE DISTRICT OF COLUMBIA, ss:

Andrew B. Duvall, Esq., corporation counsel, by James L. Pugh, Jr., Esq., assistant corporation counsel, who, for the District of Columbia, prosecutes in this behalf in his proper person, comes here into court, and causes the court to be informed and complains that Frederick de B. Weston, late of the District of Columbia aforesaid, on the 8th day of June in the year A. D. nineteen hundred and three, in the District of Columbia aforesaid, and in the City of Washington, on L street northwest, did then and there establish and maintain a certain livery stable and building wherein automobiles and locomobiles are kept for hire on said street, said street being a resident street, without first securing the written consent of seventy-five per centum of the resident householders and real estate owners on the side of the square on which said stable and building is located and seventy-five per centum of the resident householders and real estate owners on the confronting side of the opposite square, contrary to and in violation of the Police Regulations of the District of Columbia and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,
Corporation Counsel.

By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

2 THE DISTRICT OF COLUMBIA VS. FREDERICK DE B. WESTON.

Personally appeared W. B. Lyda this 9th day of June, A. D. 1903, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Deputy Clerk of the Police Court of the District of Columbia.

2 (Motion to Quash.)

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA }
vs. } No. 237,821.
FRED DE B. WESTON }

And now comes the defendant and moves the court to quash the information against him for the following reasons:

1. That Art. 10, Section 15 of the Police Regulations as amended and in force in the District of Columbia, and upon which this information is based, is uncertain, indefinite and vague, for that, the words "automobile and locomobile" as used therein are not synonymous terms, and for the further reason that it is not understood what is meant by "automobile livery stable."

2. That said Art. 10, Section 15, of the Police Regulations as amended, aforesaid, is unreasonable and unusual and works a discrimination against persons engaging in the same business.

3. That the Commissioners of the District of Columbia were without authority in law to issue and enforce Art. 10, Section 15, of the Police Regulations as amended, as aforesaid.

4. That said information fails to set forth specifically the date and year when the said alleged misdemeanor complained of was committed.

W. S. DUVALL,
Atty. for Defendant.

3. In the Police Court of the District of Columbia.

THE DISTRICT OF COLUMBIA }
vs. } No. 237,821.
FREDERICK DE B. WESTON. }

The above entitled cause came on for trial on the 16th day of June, A. D. 1903, before Mr. Justice Kimball, in the Police Court of the District of Columbia.

And thereupon the counsel for the defendant moved the court to quash the information against the defendant Weston for the reason:

1. That Art. 10, Section 15, of the Police Regulations as amended and in force in the District of Columbia, and upon which this information is based, is uncertain, indefinite and vague, for that, the words "automobile and locomobile, as used therein are not synonymous terms, and for the further reason that it is not understood what is meant by 'automobile livery stable.' "

But the court overruled the said motion, and counsel for defendant then and there duly excepted.

And thereupon the counsel for the defendant moved the court to quash the information against the defendant Weston for the reason:

2. That said Art. 10, Section 15, of the Police Regulations as amended aforesaid, is unreasonable and unusual and works a discrimination against persons engaging in the same business.

But the court overruled the said motion, and counsel for defendant then and there duly excepted.

And thereupon the counsel for the defendant moved the court to quash the information against the defendant Weston for the reason:

3. That the Commissioners of the District of Columbia were without authority in law to issue and enforce Art. 10, Section 15, of the Police Regulations as amended as aforesaid.

But the court overruled the said motion, and counsel for defendant then and there duly excepted.

And thereupon the counsel for the defendant moved the court to quash the information against the defendant Weston for the reason:

4. That said information fails to set forth specifically the date and year when the said alleged misdemeanor complained of was committed.

But the court overruled the said motion, and counsel for defendant then and there duly excepted.

And thereupon the District of Columbia to maintain the issue on its part joined, offered evidence tending to show that Frederick de B. Weston maintains an establishment at No. 1319 L street northwest, in the City of Washington, District of Columbia, where automobiles are received for storage, for which he receives a monthly compensation, but that he does not hire, let or rent the said machines; that at all times during business hours the machines are subject to the control of the parties placing the same in said establishment, and that arrangements can be made, in individual cases, whereby the machines can be washed, dusted, and otherwise cared for by the attendants of the said defendant; that the signatures of the people fronting upon the square in which said establishment is located, consenting to the establishment thereof, were not obtained by the defendant.

And thereupon the District of Columbia rested.

And thereupon the defendant, by his counsel, moved the court to dismiss the defendant upon the ground that the proof
5 fails to support the allegation contained in the information, that the defendant is maintaining an automobile livery stable.

But the court overruled the said motion, and counsel for defendant then and there duly excepted.

And thereupon the defendant by his counsel moved the court to dismiss the defendant on the ground that the proof does not show that the defendant kept an automobile livery stable or building.

But the court overruled the said motion, and counsel for defendant then and there duly excepted.

And thereupon the defendant, by his counsel, moved the court to dismiss the defendant upon the ground that there is no proof to show, even if it be conceded that an automobile livery stable is maintained that automobiles or locomobiles are kept in the establishment of the said defendant for hire in the commonly accepted meaning of the word.

And thereupon the court, on the 19th day of June, 1903, sustained the said motion, and dismissed the defendant, to which ruling of the court the District of Columbia, by its counsel, then and there duly excepted.

The opinion of the court dismissing said information is as follows:

Opinion of the Court.

The court (Kimball, J.): The defendant, Frederick de B. Weston, is charged in this information with establishing and maintaining a certain livery stable and building where automobiles and locomobiles are kept for hire on said street, without securing the necessary consent.

The evidence in the case, as agreed to, seems to establish the fact that the business carried on at this place is that of keeping
6 automobiles for the owners, and that no part of the business is the keeping of automobiles to be hired out to others; that these automobiles that are kept there are paid for by the week or month, and are, where desired, properly cared for by the employes of the defendant.

Under this state of facts the defendant has made the point that this business is not the keeping of automobiles for hire, but that it is merely keeping automobiles of others for compensation, for pay, and that it does not come within the legal, technical meaning of the words "for hire."

I have carefully examined various laws of Congress, and laws in force or that have been in force in the District covering livery stables, to find out how Congress and the Legislative Assembly have in their

description of livery stables defined that business.

In the old Legislative Assembly Act providing for the license tax, livery stables are required to be licensed, and the definition as laid down in the act—being the Act of August 23, 1871, of the Legislative Assembly—is as follows:

“Any person whose business it is to keep horses for hire, or to keep, board or feed horses for others, shall be regarded as a livery stable keeper.”

It is clear from that description that the Legislative Assembly, in providing for the license tax upon livery stables did not regard the words “for hire” as covering the feeding or caring for the horses of others. They used both terms, and it is shown by the terms they used that there was in the mind of the Legislative Assembly a difference between the two classes of business.

I find on an examination of the Act of June 30, 1864, it being the license act under the internal revenue laws, where livery stables were licensed, and also in the amendment to that act—the Act of June 9, 1866—the following definition of a livery stable:

“Any person whose business it is to keep horses for hire, or to let, or to keep, board or feed horses for others, shall be regarded as a livery stable keeper.”

Thus again clearly defining and separating the words “for hire” in their meaning, from the words which would define the business of caring for or feeding the horses of another.

In Bouvier’s Law Dictionary, in its definition of the word “Hire,” it defines it as:

“A bailment in which compensation is to be given for the use of a thing, or for labor and services about it.”

The hire of labor and work to be done or care and attention to be bestowed on the goods let by the hirer—“*Locatio operis faciendi*”—I don’t suppose I need to quote the Latin definitions.

Another definition in the same dictionary is: “The hire of the carriage of goods from one place to another, for compensation.”

Another is: “The bailment of a thing to be used by the hirer for a compensation to be paid by him.”

I found other laws where the same distinction is made.

It seems to be a clear distinction between “for hire,” which presupposes the transferring of the property of one to another for that other’s use, for pay, and the boarding or letting or care of a thing for pay.

It seems to me that under the facts as we have them in this case, the sole words being “for hire,” those words must be taken in the usual legal signification, which means the transfer of the property of one to another for pay. In the statement of the facts in this case there does not seem to be any hiring. The owners of these automo-

biles deliver them into the custody of the defendant for the purpose of storage, or for the purpose of having them cared for; but they do not hire them to the owner of the warehouse, neither does the owner of the warehouse hire the carriages to them. He does his work for compensation, the storage and the work that he does is for compensation, but it cannot be said, it seems to me under the authorities I have been able to examine in the limited time at my disposal, that these automobiles or locomobiles are kept for hire within the meaning of the law.

I therefore will have to sustain the objection of the defendant that the proof does not bring the case at bar within the law.

Mr. PUGH. If your Honor please, I desire to except to the rulings of the court, and give notice of my intention to take the case to the Court of Appeals.

And the said exceptions and each of them were duly noted upon the minutes of the court before the court announced its judgment in the case and notice was given of the intention of the District of Columbia to apply for a writ of error.

9 IN WITNESS WHEREOF, at the request of the District of Columbia's counsel, the presiding Justice signs this bill of exceptions this 20th day of June, A. D. 1903.

I. G. KIMBALL,
Presiding Justice.

(Copy of Docket Entreis.)

10 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	} No. 237,821.
vs.	
FREDERICK DE B. WESTON.	

Information for violation of Police Regulations.

June 17, 1903: Motion to quash information filed. Motion to quash argued and overruled. Plea: Not guilty. Continued to June 19, 1903.

June 19, 1903: Hearing resumed and judgment of not guilty rendered. Upon rendition of judgment the District of Columbia, through its counsel, excepts to the rulings of the court on matters of law and gives notice in open court of its intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error. Whereupon judgment entered. Defendant discharged.

June 22, 1903: Bill of exceptions filed, settled and signed.

11 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia. } ss:

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 10, inclusive, to be true copies of originals in cause No. 237,821, wherein the District of Columbia is plaintiff and Frederick de B. Weston defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, the City of Washington, in said District, this tenth day of July, A. D. 1903.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

12 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable I. G. Kimball, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between the District of Columbia, plaintiff, and Frederick de B. Weston, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 1st day of July, in the year of our Lord one thousand nine hundred and three.

[Seal Court of Appeals, District of Columbia.]

ROBERT WILLETT,
*Clerk of the Court of Appeals of the
 District of Columbia.*

8 THE DISTRICT OF COLUMBIA VS. FREDERICK DE B. WESTON.

Allowed by

SETH SHEPARD.

*Associate Justice of the Court of
Appeals of the District of Columbia.*

Endorsed on cover: Police Court, District of Columbia. No. 1350.
The District of Columbia, plaintiff in error, *vs.* Frederick de B. Weston.
Court of Appeals, District of Columbia. Filed July 10, 1903. Robert Willett, clerk.

